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11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**
13

14 MICHAEL LAVIGNE, *et al.*,
15 Plaintiffs,
16 vs.
17 HERBALIFE LTD., *et al.*,
18 Defendants.

CASE NO. 2:18-cv-07480-JAK (MRWx)

**DECLARATION OF SACHA
MAURICIO DOMINGO DONOVAN
IN SUPPORT OF HERBALIFE'S
OPPOSITION TO PLAINTIFFS'
MOTION FOR CLASS
CERTIFICATION**

Date: February 10, 2020
Time: 8:30 A.M.
Crtrm.: 10B

Assigned to Hon. John A. Kronstadt

1 **DECLARATION OF SACHA MAURICIO DOMINGO DONOVAN**

2 I, Sacha Mauricio Domingo Donovan, declare as follows:

3 1. I am currently the Vice President of Worldwide Member Business
4 Practices and Compliance (“MPC”) at Herbalife International of America, Inc.
5 (“Herbalife”), a party to the above-entitled action. I have held this position since
6 2011, and have worked at Herbalife since 2008. I have personal knowledge of the
7 facts set forth herein, which are known by me to be true and correct, and if called as
8 a witness, I could and would competently testify thereto.

9 **Nutrition Clubs**

10 2. A nutrition club is one daily method of operation (or “DMO”) that
11 Herbalife distributors can pursue. A nutrition club serves as a gathering spot for
12 a distributor’s downline members, prospective downline members, and customers
13 where the distributor can, among other things, sell product, conduct trainings, and
14 run fitness classes.

15 3. There are many ways to run a nutrition club, and those distributors who
16 choose to operate a commercial nutrition club (*i.e.*, not out of one’s residence) have
17 the freedom to pursue this type of business as they best see fit. As with any
18 business, the profitability of a commercial nutrition club may turn on any number of
19 factors, such as local demand, the location of the club, the club’s offerings, and the
20 overall business acumen of the club operator. In addition, a club operator must
21 generate enough revenue through his or her business to cover overhead expenses
22 that might be associated with operating the club, like monthly rent.

23 4. According to Herbalife’s records, about 13% of Herbalife distributors
24 in the U.S. are involved in the operation of a commercial nutrition club.

25 **Herbalife Policies Regarding Event Content**

26 5. Herbalife has always required that the content presented at events be
27 truthful, accurate, and not misleading. Herbalife’s policies regarding event content
28 and the enforcement of those policies, however, have evolved over time. For

1 example:

- 2 • Since as early as January 1997, Herbalife's rules have required the
3 verification and/or substantiation of income claims.
- 4 • Since as early as May 2005, Herbalife's rules have required that
5 earnings claims, including lifestyle claims, be accompanied by
6 a disclaimer.
- 7 • In or around 2014, Herbalife published guidance regarding the making
8 of claims that advised against showing excessive lifestyle images.
9 Since around July 2016, Herbalife's rules have prohibited distributors,
10 including event speakers, from displaying lavish lifestyle images.
- 11 • For more than ten years, Herbalife has had a process (which process
12 has evolved over time) for requiring speakers at corporate events to
13 submit their presentations to the company for review ahead of time.
- 14 • For at least the last five years, Herbalife has offered more formalized
15 training and/or guidance to distributors about the making of claims.
16 For example, in or around 2014, Herbalife published guidelines
17 regarding the making of claims, including income claims. In
18 May 2016, Herbalife required distributors to undergo mandatory online
19 training regarding, among other topics, income claims and business
20 management. In February 2017, Herbalife made available to
21 distributors additional training regarding these issues.

22 **Disciplinary Actions Regarding Florida Defendants**

23 6. Of the 44 individuals whom I understand were originally named as
24 defendants in this action (the "Florida Defendants"), Herbalife's records reflect that
25 from 2009 through the present, eleven have been the subject of disciplinary actions
26 relating to the so-called "banned" practices alleged by Plaintiffs. The majority of
27 these actions involved income claims (typically posted on social media websites or
28 other online platforms) without the required disclaimers. Only one of these

1 disciplinary actions involved claims made by a distributor at an Herbalife event.

2 7. In each instance, Herbalife required the removal of any misleading
3 content (and/or the addition of any required disclaimers), and counseled or
4 disciplined the distributor at issue. Roughly half of these disciplinary actions were
5 initiated as a result of the MPC group's proactive efforts to identify and remove
6 potentially misleading information.

7 8. Other than a handful of them making income claims without an
8 appropriate disclaimer (and/or making lavish lifestyle claims contrary to Herbalife's
9 policies), I am not aware of any of the Florida Defendants engaging in any of the
10 other so-called "banned" practices alleged by Plaintiffs (*e.g.*, money laundering,
11 currency arbitrage, nepotism, or the pre-opening of international markets).

12 I declare under penalty of perjury under the laws of the United States of
13 America that the foregoing is true and correct.

14 Executed December 19, 2019, at Los Angeles, California.

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18 Sacha Mauricio Domingo Donovan
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